

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.K. MISRA

CRP.PD.NO.1238 OF 2003

and

C.M.P.NO.8736 OF 2003

M. Sampath

S/o. Murugesu Gounder .. Petitioner

-Vs-

Geethanjali Investments

rep. by its Power of Attorney Agent,

Sandhapet,

Gudiyatham. .. Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order passed in I.A.No.386 of 2002 in O.S.No.181 of 2002, on the file of Subordinate Judge, Gudiyatham dated 7.2.2003.

!For Petitioner : Mr.T. Dhanya Kumar

^For Respondent : Mr.G.R. Swaminathan

Amicuscurie : Mr.T.R. Mani

Senior Counsel

:O R D E R

This Civil Revision is directed against the order passed under Order 38 C.P.C., in a pending suit.

2. This Civil Revision Petition has been heard extensively on the question of maintainability. Apart from hearing Mr.T. Dhanya Kumar, learned counsel appearing for the petitioner and Mr.G.R. Swaminathan, learned counsel appearing for the respondent, Mr.T.R. Mani, Senior Counsel has addressed the Court as Amicus curie.

3. Learned counsel appearing for the respondent has submitted that since Revision is directed against the order passed in a matter relating to Order 38 C.P.C., and by the impugned order the suit has not been disposed of, the Revision is not maintainable in view of the provisions contained in Section 115 C.P.C. as amended.

4. Learned counsel for the petitioner on the other hand has submitted that the impugned order has the effect of disposing a proceeding, and therefore, the Civil Revision would be maintainable.

5. Section 115 of the Civil Procedure Code has been recently amended. The relevant provision as contained in Section 115(1) is extracted hereunder :-

□ Section 115 (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or order proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding.

6. A bare reading of the aforesaid proviso after 1999 amendment makes it clear that the High Court shall not vary or reverse any order except where the order if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding.

7. Such provision has been interpreted by the Supreme Court in the decision reported in 2003(2) CTC 564 (SHIVSHAKTHI CO-OPERATIVE SOCIETY, NAGPUR VS. M/s. SWARAJ DEVELOPERS) and has held that Revision is not maintainable against the interlocutory orders in view of the amended provision contained in the Civil Procedure Code.

8. In JT 2003(6) SC 465 (SURYA DEV RAI v. RAM CHANDER RAI & OTHERS), the Supreme Court while observing that Revision would not be maintainable in a matter relating to order of injunction under Order 39 Rule 1 & 2 C.P.C., has observed that in an appropriate case, jurisdiction of the High Court under Article 226 and 227 of the Constitution can be invoked.

9. In view of the aforesaid two decisions of the Supreme Court, there cannot be any doubt that the present Civil Revision Petition is not maintainable and is hereby rejected. However, since the Revision has been found to be not maintainable and merits of the contentions relating to impugned order have not been considered, it goes without saying that it would be open to the petitioner to pursue his remedy in accordance with law.

Index : Yes
Internet: Yes

dpk

To

1. The Subordinate Judge, Gudiyatham.
2. The Record Keeper, V.R. Section, High Court, Madras.□